IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

RFA.No. 622 OF 2006()

OS.811/1995 OF PRINCIPAL SUB COURT,ERNAKULAM

APPELLANT/1ST DEFENDANT:

K.S. HENRY, AGED 47 YEARS,
S/O.K.J. SEBASTIAN, CHETTUPARAMBIL HOUSE,
RAVIPURAM, KOCHI-682 015.

BY ADV. SRI.K.B.SURESH

RESPONDENTS/PLAINTIFFS & 2ND DEFENDANT:

1. K.K. ABRAHAM, AGED 51 YEARS,
S/O.LATE K.C. ANTONY, RESIDING AT
35/2805-B, PALARIVATTOM, KOCHI-25.

2. T.M. JOHN, AGED 49 YEARS,
S/O.LATE P.V. MATHAI, RESIDING AT 33/1320-A,
VENNALA, KOCHI-682 028.

3. STANLY, AGED ABOUT 55 YEARS,
S/O.LATE CHAKKAPPAN, KADICHINI HOUSE,
NAITHAKUDI, VADAMA DESOM,
MUKUNDAPURAM TALUK.

BY ADV. SRI.M.P.RAMNATH
SRI.K.K.CHANDRAN PILLAI
SRI.R.V.SATHYAPRIYAN NAIR
SRI.UNNIKRISHNAN. S (VELOTHIL)
SRI.JEN.V.KURIAKOSE

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & V. K. MOHANAN, JJ.

R.F.A. NO. 622 OF 2006

DATED THIS, THE 9TH DAY OF OCTOBER, 2007.

J U D G M E N T

Raman, J.

This is an appeal against the judgment and decree passed by the Principal Subordinate Judge's Court, Ernakulam, in O.S. 811/1995 instituted by Respondents 1 and 2 as plaintiffs.

2. The appellant is the first defendant and the third respondent is the second defendant in the said suit. The suit was filed for return of advance sale consideration. The appellant expressed his readiness to give Rs. 80,000/- with interest at the rate of 6% per annum from 25.5.1999. The third respondent who was the second defendant, through his counsel, made an endorsement on the written statement for passing a decree for Rs. 2,20,000/- with interest thereon at the rate of 6% per annum from 15.5.1995. Exts.A1 to A8 were marked in the case. Ext.A1 is the sale agreement dated 30.12.1994 evidencing payment of an advance sale consideration of Rs.3,01,000/-. The agreement subsequently fell through and the court found that in that circumstance, the advance amount paid to be returned. The suit was decreed allowing the plaintiffs to realise a sum of Rs.

3,58,735/- with future interest at the rate of 12% per annum for the principal amount of Rs. 3,01,000/- from the date of suit till realisation and costs of the suit from the defendants and their assets. The liability of the third respondent namely, the second defendant in the suit was limited to Rs. 2,20,000/- with 12% interest from 30.12.1994 till realisation of the amount. It was further observed that if the second defendant (third respondent herein) is paying the said amount it can be set off from the decree debt and the appellant need pay only the balance amount.

3. While the appeal was pending consideration, the appellant filed I.A. 3701/2007 praying to accept Annexure A1, incorporate the conditions therein and to allow him to withdraw the appeal. This is opposed by the third respondent. Annexure A1 is a receipt issued by respondents 1 and 2 in favour of the appellant. The third respondent is not a party to the said receipt. Since the third respondent is continuing in the party array in this appeal, without his juncture Annexure A1 cannot be recorded and appeal disposed of in that manner.

4. After arguing the matter, learned counsel for the appellant submitted that he may be permitted to withdraw the appeal leaving his right to work out his remedies based on Annexure A1 in independent proceedings. Obviously, there cannot be any objection to the said request

made.

In the result, the appeal is dismissed as withdrawn. Half of the court fee paid shall be refunded to the appellant. The right, if any, based on Annexure A1 is a matter which the appellant may work out in an independent proceeding in accordance with law.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-